

May 6, 2022

BY ELECTRONIC MAIL

Office of the Chief Counsel
Attention: FAA Part 16 (Airport Proceedings Docket)
Airport Law Branch, AGC-610
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, DC 20591
9-AWA-AGC-Part-16@faa.gov

RECEIVED

MAY 06 2022

PART 16 DOCKETS

**RE: *Doupe Services, LLC d/b/a Curtis Air Taxi and Jobs Lane Aviation, LLC
v. Town of East Hampton, New York,*
FAA Docket No. 16-22-05
Motion to Amend Complaint**

The Complainants—Doupe Services, LLC d/b/a Curtis Air Taxi and Jobs Lane Aviation, LLC—through their undersigned counsel, respectfully move (pursuant to 14 C.F.R. § 16.23(j)), to amend their April 18, 2022 Complaint in this docket to the extent necessary to reflect developments subsequent to its filing. This motion is supported by good cause, because it would ensure that FAA's decision is based on a complete factual and legal record, and further because no briefing yet has occurred.

The Complaint alleged that the Town of East Hampton, New York—irrespective of its planned 33-hour closure (starting on May 17) and rebranding of the East Hampton Airport ("HTO" or "Airport")—would continue to be subject to the prohibition on exclusive rights in rights codified at 49 U.S.C. § 40103(e) and the prohibition on revenue diversion codified at 49 U.S.C. § 47133(a), so long as the airport is in operation. The Complaint also asked FAA to confirm that the restrictions proposed by the Town—premised on its mistaken understanding that Section 40103(e) would no longer be applicable after the closure—actually would continue to be inconsistent with the statutory requirement.

The Town yesterday adopted the proposed restrictions, substantively similar to the proposals previously submitted, and subject to civil and criminal enforcement (see new Exhibits 22-23).¹ Accordingly, there now should be no question that the Complaint is ripe for decision—and should be expedited, as previously requested, given the short timeframe until the restrictions are scheduled to be implemented (i.e., immediately after the closure ends, on May 19).

¹ See also <https://www.youtube.com/watch?v=FjJvAgy-bcY>, at 2:59PM. In the final version of the rules, the weight-based thresholds for the Town's landing fees (Attachment B) have been modified from those that appeared in the prior draft (see Exhibit 8).

Moreover, FAA specifically should confirm that the adopted restrictions are in conflict with Section 40103(e). Consistent with the prior briefing, it is well-established that Section 40103(e) prohibits constructive exclusive rights—and all of the restrictions will constrain certain operations at HTO while allowing others to continue, in direct violation of that principle. For the so-called “Operator-Based Permission,” “Noise-Based Permission,” and “Size-Based Permission” restrictions, the conflict is transparent, since they selectively deny access to the Airport.² But FAA also should recognize that the Town’s “Time-Based Permission” restriction, because it exempts government and certain other operations, also creates an impermissible exclusive right. *See, e.g., Jones v. Lawrence County Commission, Alabama*, FAA Docket No. 16-11-07, Director’s Preliminary Determination, at 26 (July 16, 2012). And the punitive schedule of landing fees for all but the smallest aircraft that has been adopted along with the restrictions also are impermissible. *See Bombardier Aerospace Corp. v. Santa Monica*, FAA Docket No. 16-03-11, Director’s Determination, at 39, 53 (January 3, 2005) (concluding that airport’s landing fees were facially unreasonable—and that to the extent that they violated Grant Assurance No. 22, they also comprised a forbidden exclusive right).³

Respectfully submitted,



Jol A. Silversmith, Esq.
Barbara M. Marrin, Esq.
KMA Zuckert, LLC
888 17th Street, N.W., Suite 700
Washington, DC 20006
(202) 298-8660
jsilversmith@kmazuckert.com
bmarrin@kmazuckert.com

² Other restrictions that have been adopted by the Town—such as on touch-and-go operations—are not documented to be based on any safety or other justification, and thus also violate federal law. *See, e.g., Airport Compliance Manual*, FAA Order 5190.6B, § 14.8. Likewise, future restrictions on the sale of lead-based fuel or on the operation of aircraft that utilize lead-based fuel would be impermissible. *See, e.g., In the Matter of Compliance with Federal Obligations by the City of Santa Monica*, FAA Docket No. 16-16-13, Notice of Investigation, at 5 (September 26, 2016).

³ In one of the lawsuits pending in the Suffolk County Supreme Court in New York—*Coalition to Keep East Hampton Airport Open, Ltd., et al. v. Town of East Hampton*, no. 602801/2022—the Petitioners’ April 18, 2022 memorandum of law observed that the landing fees at HTO will exceed those assessed at JFK and LGA. *See id.* at 3.

Index to Exhibits

- 1) Bill O'Connor, Cooley LLP, HTO After Expiration of FAA Grant Assurances (October 19, 2021)
- 2) Letter from Jay Schneiderman, Supervisor, Town of Southampton, to Peter Van Scoyoc, Supervisor, Town of East Hampton (December 10, 2021)
- 3) Christopher Walsh, "East Hampton Likely to Temporarily Close Airport," East Hampton Star (October 21, 2021)
- 4) Town of East Hampton, Press Release, The East Hampton Town Board Votes to Delay Deactivation of the East Hampton Airport and Activation of the New Private-Use Airport After Receiving Assurances from the FAA (February 17, 2022)
- 5) East Hampton Resolution No. 2022-190, SEQRA Negative Declaration to Deactivate EH Airport (January 20, 2022)
- 6) East Hampton Resolution No. 2022-342, Resolution Amending SEQRA Negative Declaration to Deactivate East Hampton Airport and Open New Private Use Airports and Related FAA Required Action (March 3, 2022)
- 7) Bill O'Connor and Andrew Barr, Cooley LLP, SEQRA Study Phase and Data Collection – Proposed PPR Framework for 2022 Season (March 1, 2022)
- 8) Town of East Hampton, Rules and Regulations for East Hampton Airport (Effective Date: May 19, 2022)
- 9) Bill O'Connor, Cooley LLP, SEQRA Study Phase and Data Collection – Final PPR Framework for 2022 Season (April 12, 2022)
- 10) Letter from Jim Brundige, Airport Director, to Airport Users, regarding "Special Procedures" (March 28, 2022)
- 11) Cooley LLP, Recommendation Regarding the East Hampton Airport (January 18, 2022)
- 12) Letter from David A. Fish, Director, Airports Division, FAA Eastern Region, to Peter Van Scoyoc, Supervisor, Town of East Hampton (November 6, 2020)
- 13) Letter from Marie T. Kennington-Gardiner, Regional Administrator, FAA Eastern Region, to Peter Van Scoyoc, Supervisor, Town of East Hampton (February 2, 2002)

- 14) Diogenes Ramos, Obstruction Evaluation/Airport Airspace Analysis Specialist, FAA Eastern Region, Notice of Airport Airspace Analysis Determination, Establish Private Use Airport, Conditional No Objection (March 18, 2022)
- 15) Town of East Hampton, Press Release, East Hampton Town Board Committed to Change at East Hampton Airport in Order to Address Noise, Traffic, Environmental, Safety Concerns (February 3, 2022)
- 16) Town of East Hampton, Frequently Asked Questions: East Hampton Airport (February 7, 2022)
- 17) Press Release, Milestones Reached, Preparations Continue as East Hampton Town Is Poised to Deactivate Public East Hampton Airport and Replace It with a New, Private-Use Facility (March 23, 2022)
- 18) Letter from Caroline D. Cassidy, Aeronautical Data Team, FAA, to Peter Van Scoyoc, Supervisor, Town of East Hampton (March 24, 2022)
- 19) Town of East Hampton, Notice (February 1, 2022)
- 20) Letter from Aircraft Owners and Pilots Association, Eastern Region Helicopter Council, General Aviation Manufacturers Association, Helicopter Association International, National Air Transportation Association, and National Business Aviation Association, to Carole Brennan, Clerk, Town of East Hampton, regarding "Proposed Prior Permission Required (PPR) Framework" (March 18, 2022)
- 21) East Hampton Resolution No. 2018-1161, Retain Rigano, LLC as Outside Environmental Counsel (October 9, 2018)
- 22) East Hampton Resolution No. 2022-630, Adopt Rules & Regulations for Use of East Hampton Airport JPX (May 5, 2022)
- 23) Town of East Hampton, Rules and Regulations for East Hampton Airport (Effective Date: May 19, 2022)

Certificate of Service

I hereby certify that I have this day caused the foregoing pleading to be served on the following persons at the following addresses by electronic mail:

A handwritten signature in black ink, appearing to read "Jol A. Silversmith", written over a horizontal line.

Jol A. Silversmith

Town Board Supervisor Peter Van Scoyoc
159 Pantigo Road
East Hampton, NY 11937
pvanscoyoc@ehamptonny.gov

Airport Manager James Brundige
173 Daniels Hole Road
Wainscott, NY 11975
jbrundige@ehamptonny.gov

Cc:

Bill O'Connor, Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
woconnor@cooley.com

J. Parker Erkmann, Cooley LLP
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
perkmann@cooley.com

Andrew D. Barr, Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
abarr@cooley.com

Kelsey Spector, Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
kspector@cooley.com

Town Clerk Carole Brennan
159 Pantigo Road
East Hampton, NY 11937
cbrennan@ehamptonny.gov

Town Attorney John Jilnicki
159 Pantigo Road
East Hampton, NY 11937
jjilnicki@ehamptonny.gov

Exhibit 1

HTO After Expiration of FAA Grant Assurances

Prepared for the Town of East Hampton

Presented by Bill O'Connor

October 19, 2021

Cooley



Grant Assurances Explained

- The Town's most recent Airport Improvement Program (AIP) grant expired on September 25, 2021
 - Acceptance of an AIP grant binds the airport to federal “grant assurances” for a specified term, usually 20 years for public airports
 - During this period, an airport must comply with federal obligations to:
 - Remain open to the public
 - Retain revenue for airport use only
 - Maintain an airport layout plan

Grant Assurances Have Expired

- The Town regained local control over the Airport upon expiration of the grants on September 26, 2021:
 - The Town may close the Airport
 - Airport revenue is not restricted
 - HTO is no longer subject to the FAA's rates and charges policy
 - The Airport may change its status to private use
- The future of HTO is now a matter of local decision making
 - State and local requirements for airports still apply



Airport Legal Background

- 2015 Airport Use Restrictions
 - *Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*
- Part 161 insufficient to address the Town's goals
- Legislative efforts in Congress
- FAA consultation in 2020 and 2021 to determine legal options
- 2021 Airport Re-envisioning Project

Re-envisioning Project Overview

- Seven Town Board Work Sessions in 2021:
 - May 11
 - Cooley Airport Legal Update
 - HMMH Review of Operations and Complaints in 2019 and 2020
 - HR&A Economic Impact Analysis for HTO
 - Rigano LLC Update on Airport Superfund Site Report
 - July 6
 - HMMH Summer Jet Traffic Addendum for 2020
 - Air Quality Report by Don J. Wuebbles, Ph.D.

May

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30	31					

June

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July

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25	26	27	28	29	30	31

Re-envisioning Project Overview

- August 3
 - East Hampton Airport Environmental Conditions, Planning & Zoning (Liquori/Flinker)
- August 17
 - East Hampton Airport – Overview of Public Participation Process (Liquori/Flinker)
- September 7
 - HMMH Feasibility Study for the Diversion of Airport Operations at East Hampton Airport
- October 12
 - Public Engagement Process Summary (Liquori/Flinker)
- October 19
 - Cooley Airport Legal Update

August

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September

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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October

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17	18	19	20	21	22	23
24	25	26	27	28	29	30
						31

Re-envisioning Project Overview

- Four Public Listening Workshops in 2021
 - September 9
 - September 10
 - September 13
 - September 20
- Consistent public engagement at Town Board Work Sessions
- Written comments received on a number of topics
- Airport user survey completed during 2021 Summer Season

September

S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Legal Considerations and Options

- HTO may now legally close after the grants expired on September 26, 2021
- FAA letter dated November 6, 2020 regarding the Town's options:
 1. Negotiation of an agreement for mandatory restrictions on aircraft operators per Part 161;
 2. Closure of the airport after the grant assurances expire and the reopening of the airport;
 3. Complete closure of the airport; or
 4. Continue to operate the airport as a public use airport (*status quo*).

Legal Considerations (Option 1)

1. Negotiation of an agreement for mandatory restrictions on aircraft operators per Part 161
 - Airport noise and access restrictions at public use airports may be agreed to by all users or certain types of users (e.g., helicopter, seaplane and jet charter companies)
 - However, “new entrants who are not notified may not be subject to the restrictions”
 - FAA letter dated November 6, 2020
 - No aircraft operator has ever negotiated an agreement for mandatory restrictions at HTO with the Town

Legal Considerations (Option 2)

2. Closure of the airport after the grant assurances expire and the reopening of the airport

- “Option 2 considers that the federal grant assurances will expire after September 26, 2021 at which time the federal obligation to keep the airport open expires. The Town can close the airport, use the remaining funds in the airport account as it desires, dispose of the land, or not. The remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure. The Town of East Hampton can then choose to change the use of the airport from public to private use.”

Legal Considerations (Option 2)

2. Closure of the airport after the grant assurances expire and the reopening of the airport
 - “[Under Option 2], The Town could also re-open as a traditional public-use airport or as a private-use airport made available to others by the Town through authorized rights or by requiring prior permission. A private-use airport would not be eligible for inclusion in the NPIAS or FAA funding. The Town would still need to comply with New York State private-use airport requirements and standards.”
 - NPIAS = National Plan of Integrated Airport Systems
 - Consideration of state and local processes for establishment of private airports

Legal Considerations (Option 3)

3. Complete closure of the airport after the grant assurances expire
 - “Option 3 is for the Town to close the airport completely. This would require notice pursuant to Part 157. There may also be state and local requirements with which the Town would have to comply”

Process to Close HTO

- Options 2 and 3 require closure even if the airport reopens under Option 2
 - Step 1 – provide prior notice to the FAA on Form 7840-1 to deactivate the Airport pursuant to 14 C.F.R. § 157.3(c), (e)
 - Step 2 - the Airport will be deactivated 30-days. 14 C.F.R. § 157.5(b)(2)
 - Step 3 - 15 days after the expiration of the 30-day period, confirm completion of the deactivation with the FAA. 14 C.F.R. § 157.9
- Timing considerations for closure

Process to Reopen

- Under Option 2, the Town can change the use of the airport from public use to private use and implement restrictions
 - Step 1 – close HTO to all aircraft operations (duration TBD)
 - Step 2 – implement system of authorized rights or prior permissions at HTO
 - Step 3 – re-open the Airport as a private-use airport
- The Town may coordinate modifications to the Airport during temporary closure period

Prior Permission Required

- The FAA defines Prior Permission Required (“PPR”) as “prior permission required to have full operational use of a runway, taxiway, apron, or airport facility/service.”
- PPR offers flexibility to grant, remove, and revise permissions at a private-use airport
- Permissions can include authorized rights for certain users and/or managed permissions under a plan administered by the Town
- PPR can define aircraft operations for which permission will not be granted

Prior Permission Required – Montauk Airport

- For example, Montauk Airport appears to have the ability to require :
 - Prior permission for all jets and helicopters
 - Permission will not be granted for helicopter operations from sunset to sunrise
- Montauk Airport is a privately owned, public-use airport

Substantive Rules Under PPR

- If the Town chooses to reopen the airport as a private-use airport, the Town will need to set specific policies for permissions to use HTO, including:
 - Substantive rules regarding permitted uses
 - Trial periods
 - Enforcement mechanisms
 - Amending the rules and permissions

Substantive Rules Under PPR

- A PPR framework allows for increase local control and the ability to make changes if needed
- The Town can establish initial PPR policy goals based on the Re-envisioning Project feedback and consultant studies

Options for Substantive Rules

- The following are examples of possible Town policies:
 - Implement curfews with enhanced weekend hours
 - Reduce runway length
 - Provide authorized rights for small general aviation aircraft
 - Restrict or create limits on airport use by commercial users (quotas, slots, rationing, lottery, etc.)
 - Refuse permission for certain incompatible aircraft
 - Limit FBO hours
 - Address Special VFR

Options for Substantive Rules

- Additional policies may include:
 - East Hampton Town resident preferences and incentives
 - Extend control tower operations to maintain Class D airspace
 - Noise-based restrictions
 - Increased airport fees
 - Green incentives (unleaded fuel and electric aircraft)



Next Steps

- ✓ Engage FAA in the process
- ✓ Update consultant reports based on additional community feedback
- ✓ Discuss initial parameters for private-use airport
- ✓ Identify any specific substantive rules for further analysis



Appendix A

- Annual Operations by Month (2017 to Present)

YEAR 2021	Total Ops	Source		Total Operations by type					Unknown Mode C	Seaplane* C-208
		Local	Transient	Piston Engine SE & ME	Turboprop Single Twin	Helicopters	Jets			
Jan	1,284	666	618	748	58	266	212			4
Feb	890	494	396	604	38	154	94			2
Mar	1,210	660	550	760	68	184	198			4
Apr	1,454	598	856	732	80	402	240			10
May	2,754	898	1,856	1,138	312	854	450			62
Jun	4,410	934	3,476	1,420	840	1,144	1,006			418
Jul	5,758	886	4,872	1,554	1,364	1,376	1,464			576
Aug	6,138	892	5,246	1,636	1,338	1,739	1,428			560
Sep	3,666	842	2,824	1,234	684	1,056	692			312
Oct										
Nov										
Dec										
Totals for Year	27,564	6,870	20,694	9,826	4,782	7,175	5,784			1,948

*Split out from Turboprop

**Town of East Hampton
2021 Operations**

YEAR 2020	Total Ops	Source		Total Operations by type					Unknown Mode C	Seaplane*
		Local	Transient	Piston Engine SE & ME	Turboprop Single Twin	Helicopters	Jets			
Jan	802	482	320	566	22	160	54			6
Feb	834	506	328	624	16	144	50			0
Mar	796	450	346	530	50	116	100			0
Apr	622	420	202	474	12	70	66			0
May	1,242	470	772	654	108	166	314			34
Jun	2,650	590	2,060	1,022	416	526	686			156
Jul	4,330	1,364	2,966	2,006	766	704	854			326
Aug	4,574	1,262	3,312	1,906	862	740	1,066			332
Sep	3,486	852	2,634	1,364	538	834	750			232
Oct	2,616	924	1,692	1,236	362	648	370			148
Nov	2,068	868	1,200	1,062	130	528	348			16
Dec	1,384	720	664	782	72	302	228			9
Totals for Year	25,404	8,908	16,496	12,226	3,354	4,938	4,886		0	1,259

*Split out from Turboprop

Town of East Hampton
2020 Annual Ops

YEAR	Total Ops	Source		Total Operations by type					Unknown Mode C	Seaplane*
		Local	Transient	Piston Engine SE & ME	Turboprop Single Twin	Helicopters	Jets			
Jan	520	216	304	284	16	152	68			0
Feb	642	330	312	440	28	148	26			0
Mar	716	340	376	436	36	186	58			2
Apr	896	430	466	568	60	192	76			20
May	2,416	626	1,790	910	442	740	324			236
Jun	3,840	708	3,132	1,170	874	1,224	572			538
Jul	6,780	884	5,896	1,744	1,678	2,234	1,124			986
Aug	7,410	992	6,418	1,848	1,918	2,334	1,310			1,072
Sep	3,012	790	2,222	1,124	516	962	410			310
Oct	1,526	684	842	824	188	356	158			102
Nov	1,302	560	742	696	96	384	126			22
Dec	760	394	366	482	64	144	70			8
Totals for Year	29,820	6,954	22,866	10,526	5,916	9,056	4,322		0	3,296

*Split out from Turboprop

**Town of East Hampton
2019 Annual Ops**

		Source		Total Operations by type						
		Source		Total Operations by type						
YEAR	Total Ops	Local	Transient	Piston Engine SE & ME	Turboprop Single Twin	Helicopters	Jets	Unknown Mode C	Seaplane*	
2018										
Jan	502	214	288	234	24	182	62		0	
Feb	436	172	264	224	24	132	56		4	
Mar	682	380	302	428	34	176	44		2	
Apr	818	320	498	446	50	224	98		20	
May	1,998	424	1,574	622	380	664	332		198	
Jun	4,058	648	3,410	1,134	892	1,462	570		566	
Jul	6,222	710	5,512	1,592	1,508	2,088	1,034		844	
Aug	6,884	728	6,156	1,602	1,670	2,394	1,218		928	
Sep	2,712	596	2,116	934	482	922	374		252	
Oct	1,522	572	950	730	254	368	170		100	
Nov	1,052	386	666	458	106	362	126		28	
Dec	778	402	376	536	46	124	72		0	
Totals for Year	27,664	5,552	22,112	8,940	5,470	9,098	4,156	0	2,942	

*Split out from Turboprop

Town of East Hampton
2018 Annual Ops

YEAR	Total Ops	Source		Total Operations by type					Unknown Mode C	Seaplane*
		Local	Transient	Piston Engine SE & ME	Turboprop Single Twin	Helicopters	Jets			
2017										
Jan	590	300	290	352	32	142	64			0
Feb	530	230	300	318	30	128	54			10
Mar	458	200	258	210	26	144	78			6
Apr	962	356	606	566	74	244	78			52
May	1,524	274	1,250	638	148	536	202			188
Jun	3,622	688	2,934	1,124	820	1,192	486			504
Jul	6,030	864	5,166	1,698	1,322	1,890	1,120			754
Aug	7,118	902	6,216	1,830	1,558	2,480	1,250			870
Sep	3,196	662	2,534	1,070	572	1,106	448			302
Oct	1,436	566	870	696	174	396	170			92
Nov	1,450	580	870	724	104	430	192			30
Dec	630	302	328	374	18	188	50			8
Totals for Year	27,546	5,924	21,622	9,600	4,878	8,876	4,192		0	2,816

*Split out from Turboprop

Town of East Hampton 2017 Annual Ops



Appendix B

- HTO Class D Airspace

